

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/813,493 Conf. No. 4900
In re: Funk et al. Art Unit: 3723
Filed: 03/30/2004 Examiner: Watson, Robert C.
For: WHEEL POSITIONAL RESTRAINT DEVICE AND METHOD FOR
USING THE SAME
Docket No.: 64,617-013 Customer No.: 26127

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY PURSUANT TO 37 C.F.R. § 1.111

Dear Commissioner:

This paper is responsive to the Office Action mailed January 30, 2007.

REMARKS/ARGUMENTS

1. INTRODUCTION

Claims 58-75 are pending in this application, with claims 61, 64, and 71-75 being previously withdrawn from consideration. Applicants respectfully request further examination and reconsideration of the application in view of the following arguments.

2. REJECTION OF CLAIMS UNDER 35 U.S.C. § 103(A)

Claims 58-60, 62-63 and 65-70 stand rejected as being unpatentable over Blatz et al. ("Blatz") (U.S. Pat. No. 5,328,154) in view of Extine (U.S. Pat. No. 4,108,421). Applicants respectfully submit that the rejection is improper because the Examiner has failed to establish a *prima facie* case of obviousness with respect to these claims as amended.

CERTIFICATE OF TRANSMISSION VIA EFS-WEB

I hereby certify that this paper is being transmitted to the United States Patent and Trademark Office via the Office's electronic filing system EFS-Web addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the 30th day of April, 2007.

/Alesia A. Mungons/
Alesia A. Mungons

“Patent examiners carry the responsibility of making sure that the standard of patentability enunciated by the Supreme Court and by the Congress is applied in each and every case.” MPEP § 2141 (emphasis in original).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

MPEP § 2143. Applicants submit that the Examiner has failed to establish a prima facie case of obviousness with respect to claims 58-60, 62, 63, and 65-70 because these references when combined fail to teach or suggest all of the claimed limitations, and further, there is no suggestion or motivation in the art to combine the teachings of Blatz and Extine.

Applicants respectfully submit that the prior art references when combined do not teach or suggest all of the claim limitations. Independent claim 58 recites: “A wheel support leveler assembly comprising: a positional restraint body . . . having a lower surface with at least one engaging pocket to receive at least one projection of said first planar body . . . wherein said positional restraint body is removable from said first planar body; and an obstruction on an upper surface of said restraint body, said obstruction to prevent movement of a vehicle wheel in a first given direction.” (emphasis added). The Examiner acknowledges that Blatz does not teach a removable vehicle wheel positional restraint. The Examiner asserts that Extine teaches the use of a removable vehicle wheel positioning restraint, such as element 34 or 30.

Applicants respectfully submit that Extine does not teach the use of a removable vehicle wheel positional restraint that recites all of the limitations of claim 58 (nor does Blatz). In particular, Extine does not teach the use of a removable vehicle wheel positional restraint “having a lower surface with at least one engaging pocket to receive at least one projection of said first planar body” as explicitly recited in claim 58. Element 34 is an arched tire engaging member. Element 34 does not have a lower surface with at least one engaging pocket in order to

removably couple the “positional restraint body” to a “first planar body.” Element 34 is also not “removable from said first planar body” as explicitly recited in claim 58. Element 30 is a hard rubber wedge that is placed on an opposite side of the tire than arched tire engaging member 34. Element 30 is provided to lock the tire in place and prevent movement of the tire in a direction opposite of the arched tire engaging member 34. Element 30 does not have a lower surface with at least one engaging pocket in order to removably couple the “positional restraint body” to a “first planar body” as explicitly recited in claim 58. Extine also does not teach the use of an “obstruction on an upper surface of said [positional] restraint body.” Although elements 34 and 30 may each itself be considered an obstruction that may prevent movement of a vehicle wheel, neither element 34 nor element 30 of Extine has “an obstruction on an upper surface” as explicitly recited in claim 58.

Even if the combination of references taught or suggested all of the claim limitations (which they do not), Applicants respectfully submit that there is no suggestion or motivation in the art to combine the teachings of Blatz and Extine. As stated above, the Examiner acknowledges that Blatz does not teach a removable vehicle wheel positional restraint. The Examiner asserts that one of ordinary skill in the art would have been motivated to stack a vehicle positioning element, such as element 34 or element 30 on the Blatz upper surface “in order to prevent the vehicle from overrunning the stacked wheel support when it is driven on the stacked wheel support.” Office Action mailed January 30, 2007, p. 2. Applicants respectfully disagree.

Applicants note that Blatz teaches away from the modification proposed by the Examiner and recited in claim 1. “A prior art reference that ‘teaches away’ from the claimed invention is a significant factor to be considered in determining obviousness” MPEP § 2145.X.D.1. “It is improper to combine references where the references teach away from their combination.” MPEP § 2145 X.D.2 (citing *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Furthermore, “[i]f [a] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to

make the proposed modification.” MPEP § 2143.01 (citing In re Gordon, 733 F.2d 900 (Fed. Cir. 1984)).

Blatz specifically discloses that one of the difficulties in the prior art includes providing a leveling device with ‘bi-directional driving ability.’ (Col. 1, lines 15-18). Accordingly, Blatz teaches that “[w]hen dismounting the leveler, . . . the vehicle [is] able to dismount by traveling either in the forward or reverse direction.” (Col. 5, lines 33-36). A specific object of Blatz could not be maintained if the leveling device of Blatz were modified to include a stackable positional restraint body with an obstruction that would prevent movement of a vehicle wheel in a first given direction as recited in claim 58, since the obstruction destroys the bi-directional driving ability associated with Blatz. Accordingly, because the proposed modification to Blatz would render Blatz unsatisfactory for its intended purpose, then there is no suggestion or motivation to make a proposed modification to Blatz as purportedly outlined in Extine.

In addition, Blatz specifically teaches that “the shape of the perimeter and the loose engagement of the pins and pockets allow the stack of units to adjust to the . . . weights, while preventing the stacked units from tipping during initial contact of the wheels with the leveler. . . . Further, the pins 10 extending upwardly from the upper surfaces and which are exposed to the wheels of the vehicle during mounting, provide a surface reducing the possibility of slipping between said surface and the wheels.” (Col. 5, lines 19-32). Accordingly, Blatz relies on friction between the wheel and the upper surface in order to prevent or hinder movement of the wheel off of the leveling device and relies on self-adjustment of the stack through a loose engagement of pins and pockets in order to ensure proper placement of the wheel on the leveling device. Blatz, therefore, teaches away from the asserted modification of including an obstruction that would prevent movement of a vehicle wheel. Since Blatz already accomplishes the asserted function of preventing the vehicle from overrunning the stacked wheel support through friction and self-adjustment of the stack, there can be no suggestion or motivation to modify Blatz in order to achieve this already-accomplished function.

In addition, Extine also teaches away from the claimed invention. Extine teaches use of a single leveling unit (10) which does not cooperate with other “stands.” Extine explains that the

leveling unit includes “a wood or plastic stand 12 having studs 14 or other ground-engaging means on its bottom . . .” (Col. 1 line 68 – Col. 2., line 1). Insofar as the leveling unit of Extine includes ground-engaging studs, it clearly teaches away from employing the device with additional ramps or units, since the ground-engaging studs would be inoperable.

Because the combination of Blatz and Extine fails to teach or suggest all of the claimed limitations, and because there is no suggestion or motivation in the art to combine the teachings of Blatz and Extine, the rejection of claim 58 under 35 U.S.C. § 103(a) is improper and Applicants request that the rejection of claim 58 be withdrawn. At least because claims 59-60 and 62-63 depend from independent claim 58, Applicants respectfully submit that the rejection of claims 59-60 and 62-63 under 35 U.S.C. § 103(a) is improper and request that the rejection of claims 59-60 and 62-63 be withdrawn.

Independent claim 65 recites: “A vehicle wheel positional restraint . . . comprising: a positional restraint body . . . having a . . . lower surface with at least one engaging pocket to receive at least one projection of a first planar body, in an a non-interfering manner, and said restraint body having a heel portion extending from said lower surface for positioning said heel portion lateral of said first planar body; and an obstruction on an upper surface of said restraint body, said obstruction to prevent movement of said vehicle in a first given direction. (emphasis added).

As set forth above, the combination of Blatz and Extine fails to teach or suggest all of the limitations set forth in claim 65, including a positional restraint body having a lower surface with at least one engaging pocket to receive at least one projection of a first planar body and having an obstruction on upper surface of the restraint body. In addition, claim 65 recites an additional element that does not appear in claim 58, and Applicants respectfully submit that the combination of Blatz and Extine fails to teach or suggest this additional element, namely, “a heel portion extending from said lower surface” of the positional restraint body, as explicitly recited in claim 65. Also as set forth above, there is no suggestion or motivation in the art to combine the teachings of Blatz and Extine.

Because the combination of Blatz and Extine fails to teach or suggest all of the claimed limitations, and because there is no suggestion or motivation in the art to combine the teachings of Blatz and Extine, the rejection of claim 65 under 35 U.S.C. § 103(a) is improper and Applicants request that the rejection of claim 65 be withdrawn. At least because claims 66-70 depend from independent claim 65, Applicants respectfully submit that the rejection of claims 66-70 under 35 U.S.C. § 103(a) is improper and request that the rejection of claims 66-70 be withdrawn.

3. CONCLUSION

A genuine effort to resolve all issues has been made. For at least the above cited reasons, all claims pending in this Application are now believed to be allowable. Applicants respectfully request that any questions or concerns be directed to Applicants' undersigned attorney.

Respectfully submitted,

/Adam B. Strauss/
Adam B. Strauss
Reg. No. 43,167
DYKEMA GOSSETT PLLC
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304
(248) 203-0764
ipmail@dykema.com
Customer No. 26127
Attorney for Applicant(s)

Date: April 30, 2007

BH01\750769.2
IDMROS